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OFFICE OF PETITIONS

In re Application of :
Kevin Birnie et al :
Application No. 09/384,646 : **DECISION ON PETITION**
Filed: August 27, 1999 :
Atty Docket No. 1-1-1-1 :

This is a decision on the petition filed October 31, 2003, under §1.181 based on nonreceipt of an Notice of Allowance and Fee(s) Due.

The petition under §1.181 is **GRANTED**.

The above-identified application became abandoned for failure to file a timely pay the issue fee in reply to the Notice of Allowance (Notice) mailed June 16, 2003. The Notice set a period for reply of three (3) months from the mail date of the Notice. No reply having been received, the above-identified application became abandoned on September 17, 2003. A Notice of Abandonment was mailed on October 17, 2003.

The petition supports a conclusion that petitioner promptly filed the instant petition after determining that the instant application was abandoned. Petitioner states that the application became abandoned as a consequence of the Notice of Allowance not being received by the applicant's attorney. Petitioner specifically states that, he searched the file jacket and docket records for evidence of the Notice of Allowance, but no evidence of same was found. In support of a showing of nonreceipt, petitioner submits *inter alia* a copy of their docket record for the period of May 28, 2001 through May 15, 2003.

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Petitioner's arguments and evidence have been considered, and found persuasive to show nonreceipt of the September 16, 2003, Notice of Allowance action at the correspondence address of

record. Accordingly, withdrawal of the holding of abandonment for nonreceipt is warranted.

In view thereof, the holding of abandoned is hereby **WITHDRAWN**.

This matter is being forwarded to Technology Center AU 2683 for the mailing of a new Notice of Allowance and Fee(s) Due.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3208.

A handwritten signature in cursive script that reads "Karen Creasy".

Karen Creasy
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy